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Attorneys for Defendant  
Forever 21, Inc.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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MIROGLIO s.p.a.,	:	
	:	
	:	07 Civ. 9573 (DLC)
	:	
Plaintiff,	:	
	:	
-v-	:	<b>DEFENDANT'S ANSWER</b>
	:	<b>TO PLAINTIFF'S COMPLAINT</b>
	:	
FOREVER 21, INC.,	:	ECF
	:	
	:	
	:	
Defendant.	:	
-----X	:	

Defendant Forever 21, Inc., (hereinafter "Defendant") by and through its attorneys,  
hereby answers the Complaint of Miroglio s.p.a. (hereinafter "Plaintiff") as follows:

**PARTIES**

1. Defendant lacks sufficient information to form a belief as to the truth of the  
allegations in Paragraph 1 of the Complaint and, therefore, denies the same.

2. Defendant denies all of the allegations in Paragraph 2 of the Complaint, except that it admits that Forever 21, Inc. has a place of business and executive offices at 2001 S. Alameda Street, Los Angeles, California 90058.

### **JURISDICTION AND VENUE**

3. Defendant admits that the Complaint purports to allege an action under the Copyright Act of 1976, 17 U.S. C. §§ 101, *et seq.* ("the Copyright Act"), against Defendant. Defendant denies the remaining allegations in Paragraph 3 of the Complaint. Defendant states that, pursuant to 17 U.S.C. § 411(a), this court lacks subject matter jurisdiction over the claims presented in the Complaint.

4. Defendant denies the allegations in Paragraph 4 of the Complaint.

### **MIROGLIO'S COPYRIGHTED WORKS**

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Complaint and, therefore, denies the same.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint and, therefore, denies the same.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint and, therefore, denies the same.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint and, therefore, denies the same.

### **CLAIM FOR RELIEF-INFRINGEMENT OF THE WORKS**

9. Denied.

10. Denied.

11. Denied.

12. Defendant admits that it is involved in other litigations but denies all of the remaining allegations in Paragraph 12 of the Complaint.

13. Defendant admits that Paragraph 13 of the Complaint discusses a September 4, 2007 New York Times article entitled “Before Models Can Turn Around, Knockoffs Fly,” but denies all of the allegations in Paragraph 13 of the Complaint.

14. Defendant denies that plaintiff is entitled to judgment or any other relief requested in the unnumbered WHEREFORE paragraphs of the Complaint.

**FIRST AFFIRMATIVE DEFENSE**

15. Plaintiff’s Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

16. Defendant has not infringed any valid copyrights of Plaintiff.

**THIRD AFFIRMATIVE DEFENSE**

17. Defendant did not manufacture or otherwise produce any of the designs at issue.

**FOURTH AFFIRMATIVE DEFENSE**

18. Defendant had no prior knowledge of Plaintiff’s copyrights.

**FIFTH AFFIRMATIVE DEFENSE**

19. Plaintiff has no copyrightable interest in the subject matter recited.

**SIXTH AFFIRMATIVE DEFENSE**

20. Plaintiff has not suffered any damages because Defendant’s purported actions have not deprived Plaintiff of any profits.

**SEVENTH AFFIRMATIVE DEFENSE**

21. To the extent Plaintiff has suffered damages, any such damages were caused by superseding causes, and not by any act or omission by Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

22. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

**NINTH AFFIRMATIVE DEFENSE**

23. Plaintiff's claims are barred by the doctrine of Fair Use.

**TENTH AFFIRMATIVE DEFENSE**

24. Plaintiff's claims are barred, in whole or in part, because should Defendant be found to have infringed any valid and enforceable copyright of Plaintiff, such infringement was not willful.

**ELEVENTH AFFIRMATIVE DEFENSE**

25. Plaintiff's claims should be dismissed in their entirety for lack of subject matter jurisdiction under 17 U.S.C. § 411(a), which provides that "no action for infringement of the copyright in any United States work shall be instituted until registration of the copyright claim has been made in accordance with this title", on the grounds that Plaintiff has failed to allege that it owns a federal copyright registration for its Work and has failed to provide a copy of any such registration.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, Defendant demands a trial by jury as to all issues triable by a jury.

**WHEREFORE**, Defendant respectfully prays for the following relief:

1. Dismissal of the Complaint with prejudice;
2. Dismissal of the Complaint for lack of subject matter jurisdiction;
3. An award of Defendant's costs and attorneys' fees herein incurred; and
4. Such other and further relief as this Court may deem appropriate.

Dated: November 27, 2007

Respectfully submitted,

By: s/ Robert L. Powley  
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Attorneys for Defendant  
Forever 21, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT was served upon counsel for Plaintiff by ECF and First-Class Mail, postage prepaid, on this 27<sup>th</sup> day of November, 2007, addressed as follows:

Richard S. Taffet, Esq.  
Diane C. Hertz, Esq.  
Bingham McCutchen LLP  
399 Park Avenue  
New York, NY 10022

  
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Bruni Casiano